

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**CHRISTINE BOONE,**

**Plaintiff,**

**v.**

**PENNSYLVANIA OFFICE OF  
VOCATIONAL REHABILITATION,  
*et al.*,**

**Defendants.**

**CIVIL NO. 1:CV-04-0588**

**JUDGE SYLVIA H. RAMBO**

**MEMORANDUM AND ORDER**

Plaintiff has filed a Motion to Allow Evidence and Comment on the Status of Roger Caffier and Catherine Wojciechowski as Non-party Co-conspirators (Doc. 148). Essentially, Plaintiff has requested to be able to comment on the conduct of Roger Caffier and Catherine Wojciechowski and refer to them before the jury as participants in the alleged conspiracy. Roger Caffier and Catherine Wojciechowski are not named as Defendants.

There is some evidence that the Third Circuit has allowed reference to and comment on conduct of individuals identified as co-conspirators but not named as defendants in civil cases. *See Howard Hess Dental Labs., Inc. v. Dentsply Int'l, Inc.*, 424 F.3d 363, 370 (3d Cir. 2005); *see also Computer Identics Corp. v. S. Pac. Co.*, 756 F.2d 200, 205 (1st Cir. 1985).

However, the court is denying Plaintiff's motion because under these particular circumstances, the facts alleged in Plaintiff's motion as circumstantial evidence of Mr. Caffier's and Ms. Wojciechowski's involvement in a conspiracy

consist entirely of usual and customary examples of what attorneys do in counseling and advising their clients.

To say that these acts constitute conspiracy is too speculative. *See Computer Identics Corp.*, 756 F.2d at 205 (court refused to instruct jury that it could find conspiracy between a defendant and non-defendant because the facts alleged were too speculative). In addition, allowing such comment on Mr. Caffier's and Ms. Wojciechowski's conduct would be highly prejudicial because it would burden the attorney-client privilege in such a way as to interfere with the purpose of the privilege.

Accordingly, **IT IS HEREBY ORDERED THAT** Plaintiff's Motion to Allow Evidence and Comment on the Status of Roger Caffier and Catherine Wojciechowski as Non-party Co-conspirators is **DENIED**.

1) Plaintiff's counsel may not comment on or construe facts in such a way as to infer that Roger Caffier or Catherine Wojciechowski are part of a conspiracy.

2) Plaintiff's counsel may not refer to Roger Caffier or Catherine Wojciechowski as Non-party or Non-defendant Co-conspirators.

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s/Sylvia H. Rambo  
SYLVIA H. RAMBO  
United States District Judge

Dated: November 17, 2005.